IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 301 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHIR BABU KALABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 301 of 2001
MR HASHIM QURESHI for Appellant
Mr.I.M.Pandya, learned A.P.P. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 19/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.P.DHOLAKIA)

#. This appeal is filed under Section 374 of Criminal Procedure Code by the original accused against the judgment and order dated 16.03.2001 passed in Sessions Case no. 37 of 1999 by the Additional Sessions Judge, Veraval, District Junagadh, convicting the accused for rigorous imprisonment for 10 years and fine of Rs.200/in default rigorous imprisonment for 15 days for the offence charged under Section 307 of Indian Penal Code and simple imprisonment for one month for the offence charged under Section 135 of the Bombay Police Act.

#. The brief facts of the prosecution are that on 26.07.1990, at about 7.00 p.m. when injured Lakhmanbhai was inquiring about the stolen utensils from the accused in presence of complainant Bhupatbhai Markandbhai, Jashuben w/o Lakhmanbhai, Govind Keshu and other family members, the accused took Lakhmanbhai behind the house and within a moment the other members heard the cry of "help" from Lakhmanbhai. When the other members went there and inquired, Lakhmanbhai informed them regarding the injuries received by him due to knife blow given by the accused-Babu Kala on the upper abdomen part of his body and therefore the complainant and Vadherbhai took him to the hospital wherein he was admitted as an indoor patient. Bhupatbhai gave complaint exh.15 and same was registered as Sutrapada police station C.R.No.I 43 of 1990 against the present accused for the offence punishable under Section 307 of Indian Penal Code and Section 135 of the Bombay Police Act. Thereafter, panchanama of scene of offence was drawn, muddammal-knife was recovered, accused was arrested and thereafter statements of various witnesses were recorded by the I.O., medical evidence was collected and at the end of investigation, charge sheet was submitted in the Court. Thereafter, as the offence registered against the present appellant was exclusively triable by the Sessions Court, the case was committed to the Sessions Court, Veraval, Junagadh wherein it was numbered as Sessions Case No.37 of 1999. Charge was framed against the accused. As the accused pleaded not guilty and claimed to be tried, the prosecution examined the following witnesses : (1) P.W.1 Dr.Kishorkumar Ruvidas Hariyani Exh.7 who examined the accused when brought before him with police yadi on 27.08.90 at about 1.50 p.m. wherein he has deposed that the appellant was having bruise injury on his body; (2) P.W.2 Bhupat Markandrai Joshi exh.14, the complainant, who was present in the house of victim at the time of incident and at the earliest, victim has given detailed

account regarding the incident and injury which he has received and through him the prosecution has proved the FIR-complaint exh.15; (3) P.W.3 Lakhmanbhai Arjanbhai exh.16, the victim; (4) P.W.4 Masribhai Nathubhai Vadher exh.17, who went to the house of Lakhmanbhai after hearing the shouts and when he reached there, Lakhmanbhai told him that Babu Kala has given knife blow to him and requested him to take to the hospital; (5) P.W.5 Allarkha Husainbhai Shaikh exh.18, a Police Constable serving in Veraval police station and who had been directed by the P.S.O. to go to the Government hospital and note down the complaint and in turn he recorded the complaint of complainant Bhupatbhai; (6) P.W.6 Sursing Hadabhai Kathi exh.19, the P.S.I. of Sutrapada Police Station, who started investigation in the matter and prepared the panchanama of scene of offence, arrested the accused, noted down the statements of witnesses, seized muddammal knife from the scene of offence and sent to the F.S.L. for analysis and through him the prosecution has proved yadi exh.20 which has been sent along with the muddammal to the F.S.L. and who identified the muddammal article-knife and deposed that same has been recovered from the scene of offence and (7) P.W.7 Premjibhai Devjibhai Movaliya exh.27, doctor serving in the Municipal Hospital at Veraval on duty on 26.07.90 at about 10.15 p.m. and who examined the injured who came to the hospital stating that Babu Kala had given knife blow into his stomach and same has been noted down by him in the case paper and through him, prosecution has proved the injury of the victim and injury certificate exh. 28. After seeing the muddammal article no.1-knife, he categorically opined that the injury received by Lakhmanbhai can be caused by muddammal article no.1-knife. Thereafter, prosecution submitted the closing pursis and on receiving the same, the learned Additional Sessions Judge recorded the further statement of accused under Section 313 of the Criminal Procedure Code wherein he denied the same. Thereafter, after hearing the learned counsel for the respective parties, learned Additional Sessions Judge, Veraval convicted the accused as aforesaid which is giving rise to the present appeal.

#. Heard Mr.Hasim Qureshi, the learned counsel for the appellant-accused and Mr.I.M.Pandya, learned A.P.P. for the State. Mr.Qureshi learned counsel for the appellant-accused has mainly argued that there are no eye witnesses to the incident in question except Lakhmanbhai. According to him, other witnesses are not eye witnesses. As per the evidence on record, the blood group of the victim does not match the blood group of blood found on

the knife. It is further argued that injuries received by the accused have not been explained by the prosecution and hence, offence punishable under Section 307, IPC has not been proved. If at all this Court believes it to be true, then also, the appellant is entitled to take the theory of self-defence as he was apprehending attack and therefore to save his life, he has inflicted the above referred injury. Mr.Qureshi, learned counsel for the appellant-accused has argued that the accused is a very young person having wife and minor children and liability of parents. Therefore, he has requested to reduce the sentence imposed on the accused. In support of that, he has placed reliance on the decision in case of AIR 2003 S.C.333, para 35 of which reads as under :

> "35. As regards the conviction under Section 307 of the Indian Penal Code, be it noted that upon consideration of the injury report as sustained by Ruplal Rai (PW 10), Ram Dahim Rai (PW 7) and Birendra Rai (PW 9), the factum of causing grievous hurt though established but conviction under Section 307/34 of the Indian Penal Code in the interest of justice ought to be altered to under Section 326/34 of the Indian Penal Code. It is ordered accordingly. The sentence, however, be also altered to a period of two years without however imposition of any fine."

#. Mr.Pandya, learned A.P.P. has mainly argued that prosecution has proved the guilt against the present accused beyond reasonable doubt. He has taken us through the evidence of various witnesses and argued that for an offence under Section 307, corroboration by other witnesses is not required when the injured himself has deposed and categorically narrated the incident in question. There is no chance of mis-identification either as they were known to each other and before the incident altercation or discussion had taken place among them. In these circumstances, according to him, the injured witness does not require any corroboration. He has also taken us through the injury part of the body and argued that the upper part of the abdomen is a vital part of the body and looking to the nature of injuries received, it is an offence under Section 307 and as opinion of blood group is a minor one, it is required to be exceeded. The question of self-defence will not be available to the accused as he took Lakhmanbhai from his house and it is not the case of the prosecution and/or Lakhmanbhai that Lakhmanbhai was having any deadly weapon. It is also argued that the injuries alleged to have been received by the accused are bruise and minor

one and therefore it is not required to be explained by the prosecution as accused was arrested later on.

#. We have also gone through the evidence on record, more particularly, oral as well as documentary evidence and relevant portion of the judgment shown to us by the learned counsel for the respective parties. The fact remains that victim had received serious injuries on his upper abdomen part. It is also established that accused had given knife blow to the victim and thereafter he left the scene of offence throwing the knife on the spot. It is also deposed and proved by way of corroborative evidence that Lakhmanbhai shouted from the scene of offence and therefore the persons who were sitting in his house went there and Lakhmanbhai informed them regarding the incident and narrated the fact that accused has given knife blow to him. To prove the injury, as we have stated earlier, the prosecution has examined the concerned doctor, who after seeing the muddammal article no.1-knife opined that the injury received by the injured can be possible by muddammal-knife. Evidence of the witnesses who were there in the house of Lakhmanbhai cannot be discarded as argued by the learned counsel for the appellant because their evidence is valuable evidence through whom prosecution gets support and it is their immediate version. It is well settled law that for the offence under Section 307, prosecution does not require any corroboration in normal circumstances because the injured himself has deposed and there is no reason to involve person falsely in the crime in question more particularly, when the complainant, accused and other witnesses were knowing each other and before the incident took place, they had a conversation regarding stolen utensils and therefore question of misidentification does not arise and immediately the accused took Lakhmanbhai behind his house and gave knife blow to the victim. In these circumstances, it cannot be said that accused has not given knife blow to the victim. If there are any contradictions between the medical evidence and evidence of injured witness or eye witnesses, the court should evaluate the same minutely and thereafter if the Court comes to the conclusion that evidence of the victim and other witnesses are trustworthy, then in that case, the evidence of the witnesses or injured will surpass the medical evidence because the medical evidence is an opinion and not 100% science. In these circumstances, though there is no contradiction between the evidence of victim and medical evidence therefore prosecution does not require any support, then also one can rely upon the decision reported in JT 2000(4) SC 273 wherein the Apex court, after considering Section 45 of the Indian Penal

Code, 1860, held that opinion of a doctor regarding fire arm injuries being contradictory with eye witnesses' account the same cannot wipe out the evidence of eye witnesses. We have also minutely scrutinised the evidence on record and analyzed the same with caution and came to the conclusion that the accused has given knife blow on the vital part of the body i.e. upper abdomen portion which resulted into severe injuries. In these circumstances, the judgment and order passed by the Court below does not require any interference. Hence, this appeal requires to be dismissed.

#. In view of the judgment cited above and looking to the facts and circumstances of the case, this appeal is partly allowed. The sentence imposed on the appellant for the offence charged under Section 307 IPC to undergo the rigorous imprisonment for 10 years and fine of Rs.200/- in default rigorous imprisonment for 15 days imposed on the accused vide judgment and order dated 16.3.01 in Sessions Case No. 37 of 1999 is reduced to rigorous imprisonment for seven years and fine of Rs.200/- in default rigorous imprisonment for 15 days. Rest of the judgment and order remains unaltered.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

srilatha